

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of)	
1996)	
)	CC Docket No. 95-116
Telephone Number Portability)	

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS Telecom), on behalf of its 108 incumbent local exchange carriers (ILECs) in 28 states, all of which are “rural telephone companies,”¹ and by its attorneys, submits these comments responding to the further notices of proposed rulemaking in the above-captioned proceeding.² The Commission is considering whether to require Local Number Portability (LNP) and thousands-block number pooling (number pooling) in all of the top 100 Metropolitan Statistical Areas (MSAs), and , possibly, Combined Metropolitan Statistical Areas (CMSAs). TDS demonstrates that Congress clearly intended the Commission not to require wireline local exchange carriers (LECs) either to deploy local number portability (LNP) capability or, by logical extension, to participate in thousands number pooling

¹ 47 U.S.C. §153(37).

² *Third Further Notice of Proposed Rulemaking in CC Docket 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 95-116*, FCC 02-73, CC Docket Nos. 99-200, 96-98, 95-116 (rel. March 14, 2002) (FNPRMs).

(number pooling) when the same underlying changes and competition attend each requirement. The Commission should continue its previous policy of waiting until a request from another carrier for LNP shows that there is actual competition that warrants mandating LNP in the area served by a switch. Until then, the Commission cannot simply assume that the benefits of expanding its mandate will outweigh the costs and effects on customers of interfering with other deployment initiatives that would provide actual benefits to customers.

The Commission Should Not Require LNP Capability for Any Wireline LEC, Even in a Top 100 MSA, without a Request

The Commission proposes to abandon its previous policy (§6) that carriers need not provide LNP capability except “in switches for which another carrier has made a specific request for the provision of LNP.” The Commission adopted that policy “to allow carriers to focus their resources on areas where competition is the greatest.”³ It originally adopted LNP capability requirements (§7) to help with the “development of competition among alternative providers.” It now believes (*ibid.*) that increasing competition and “alleviat[ing] number shortages” favor requiring all local exchange carriers in the top 100 MSAs to be LNP-capable “regardless of whether they receive a request from a competing carrier” (footnote omitted).

The Commission should not require LNP capability for any carrier that has not received a request from a competitor because that was not what Congress intended. The Conference Report on the 1996 Act expressly explained that the new duties imposed by §251(b), including the requirement to provide number portability, “make sense only in the context of a specific request from another telecommunications carrier or any other person who actually seeks to connect with

³ *Telephone Number Portability, CC Docket 95-116, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7273 (1997) (*Number Portability First Order on Reconsideration*).

or provide services using the LEC's network.”⁴ Accordingly, it is clear that requiring LNP without a request in the top 100 MSAs does not “make sense” in the regulatory scheme Congress enacted. Indeed, the notion that requiring LNP capability helps “develop” competition does not “make sense” in the top100 MSAs, in the first place, since all that a competitor needs to do to obtain LNP from a local exchange carrier in those markets is to request it, and the carrier must make itself LNP capable. Congress intended this competitor-initiated standard for when the prospect of actual benefits to customers and competition warrants imposing the cost of LNP capability.

The costs of upgrading the TDS Telecom switches that would be affected by requiring LNP capability for all TDS Telecom companies in the top 100 MSAs are significant. The costs and impacts are made even greater by the Commission’s proposal to interfere with the request-triggered – and thus staggered and market-based – deployment schedule the conferees had in mind. For TDS companies in the top 100 MSAs, for example, the change would require the replacement of nine switches. Simultaneous completion of all nine change-outs is simply not achievable in six months. Some of the switches involve host-remote configurations, which add to the difficulties of trying to compress deployment times in this extreme way. In addition, some of the necessary work involves other service provider companies, with which TDS Telecom would have to schedule testing time and coordination. Of course, the other providers’ scheduling decisions are not within TDS Telecom’s control. In the normal course, very few single switch change-out projects, even the smallest, have been carried out in a six-month window from engineering to cut-over. There would also be pressure to make OSS and billing system

⁴ *Joint Managers’ Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996) (Joint Explanatory Statement) at 121; see, also, id. at 119 (Senate Bill provided that even final number portability would be available “on request.”)*

accommodations. The costs and time pressures are especially unwarranted where no competitors are seeking portability at all, let alone seeking deployment on this schedule.

The cost for the switch replacements and upgrades necessary achieve LNP- and number-pooling-capability for the TDS Telecom LECs' switches in the top 100 MSAs, including CMSAs, would be approximately \$8 million, although this does not factor in the extra cost pressures of simultaneous upgrades and switch replacements. The six-month deadline for simultaneous capability would also mean that other projects in TDS Telecom's current plans and budget would not be possible because of constraints on capital and inability to add this enormous project to previously planned projects. The result of mandatory, simultaneous LNP capability deployment for top 100 MSA switches with no request would be a delay in about \$16 million-worth of planned upgrades, including even the highest priority projects. This breakneck mandatory – though unrequested – LNP capability program would delay virtually every planned rollout, system initiative, technology integration and other network enhancement project. The delays and deferrals in planned projects caused by requiring number portability in 32 affected TDS Telecom companies' switches would likely affect customers in all 108 TDS Telecom local company areas. Delays would include scheduled DSL deployment, software upgrades and other enhancements. The LNP deployment mandate could require putting to one side almost any other activity not directly related to the immediate provision of dial-tone.

In short, the cost to TDS Telecom LECs' customers in deferred actual service improvements would far outweigh the "benefit" of having LNP in a market where no carrier has even asked for it. Thus, even if the Commission decides to mandate LNP capability absent a request (in spite of the contrary intent of Congress and the cost-benefit deficit), it should exempt all "rural telephone companies." That regulatory restraint would at least spare the group

Congress tried, in crafting its pro-competitive policies throughout the Act, to spare from inappropriate or premature requirements.⁵ In any event, the Commission should exempt any switch owned by any such carrier that is not wholly in the top hundred MSA and should not bring in the switches brought in by the CMSA definition. At the very least, the Commission should exempt carriers with only a few access lines in the “competitive” MSA. TDS Telecom has LECs that have only 40, or even 2, customers in the adjacent MSA. Unless the LEC has a significant proportion and number of lines in an MSA, required deployment imposes the costs on end users for making the whole switching area LNP capable, when there is little or no benefit and even less likelihood of carrier requests.

The Commission Should Not Require Number Pooling for Any ILEC or Switch without a Request

The Commission should also refrain from requiring thousands number pooling for carriers in an MSA that have not had an LNP request and are not LNP capable. In the first place, the Commission is incorrect in generalizing from the comment of a wireless provider that pooling is not a problem without LNP capability. For the TDS Telecom local exchange carriers, that is simply not the case. Although it is possible for a carrier to implement number pooling without fully implementing LNP, both capabilities require the same underlying switch functionality and associated switch upgrade expenditures. Carriers that cannot support LNP or number pooling in their existing software release must incur significant expense to make the necessary upgrades to provide either capability. Thus, as a practical matter, number pooling cannot be implemented more readily or cost-effectively than LNP. Although the Commission seeks to maximize the effectiveness of number optimization measures such as number pooling by maximizing participation, it should ensure that the benefits justify the costs. Without

⁵ See 47 U.S.C. §§251, 253, 214(e).

competition, the benefits of number pooling do not. Thus, once again, when it considers mandating number pooling, the Commission should abide by the guidance of Congress to decide that any LNP requirement or number pooling requirement requiring substantially similar upgrades to foster existing competition should begin with a carrier request.

TDS Telecom understands and supports the Commission's desire to conserve numbering resources and its belief (§9) that maximizing participation helps pooling to work. However, the Commission says (§10) it has

focused on LNP and pooling efforts in the largest MSAs because those are the areas most likely to have competitive markets that would benefit from these measures. Conversely, we have not required carriers to provide LNP or to participate in pooling in less populous areas because the full benefits of these measures would not likely be realized in areas without sufficient competition.

That policy is sound. The Commission says that policy “remains intact.” In applying it, the Commission needs to recognize that the areas served by small and rural local exchange carriers like the TDS Telecom carriers – even in MSAs and CMSAs – are precisely the kind of “less populous areas” where “the full benefits of these measures would not likely be realized” because there is not “sufficient competition. If there were enough competition to make number pooling benefits meaningful, there would likely have been requests for LNP, and the switches would have come under the LNP capability mandate and, consequently, under the mandate to provide number pooling. As explained above, the Joint Explanatory Statement from the authors of the LNP requirement provide the Commission with a self-executing test for competitive markets and sufficient benefits – requests from carriers to provide the LNP component of the statutory interconnection tools. The Commission should continue to apply that trigger for wireline carriers, since they need the same basic switch capability to provide number pooling as to provide LNP

Conclusion

Until there is competition, the benefits of LNP and number pooling are very limited, at best, as the Commission has recognized, but the costs are substantial. The guidance of Congress as to when there is enough competition to impose the LNP and other §251(b) requirements directs the Commission to trigger its LNP requirement from an actual request. That trigger should apply here, too, at least for wireline carriers, with regard to both LNP capability and number pooling, which require similar expenditures to install the same underlying switch functionality in either case. Therefore, TDS Telecom respectfully urges the Commission to take its lead from the Conferees and continue to require a request for LNP, demonstrating competition that indicates potential benefits, before mandating the costs and other deployment impacts of LNP capability or numbers pooling for any wireline carrier in any MSA or CMSA.

Respectfully submitted,

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May 6, 2002

